

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Empresa Brasileira de
Telecomunicações S.A.

Petition for Declaratory
Ruling on Access to Brasilsat A2
Satellite via U.S. Earth Stations

File No. SAT-PDR-20000111-00047

ORDER

Adopted: January 12, 2001

Released: January 16, 2001

By the Chief, Satellite and Radiocommunication Division, International Bureau:

I. INTRODUCTION

1. In this Order, we add the Brasilsat A2 satellite, operated by Empresa Brasileira de Telecomunicações S.A. (Embratel), and to be located at the 63° W.L. orbit location, to the "Permitted Space Station List," with conditions. The Permitted Space Station List denotes all satellites with which U.S. earth stations with "routinely" authorized technical parameters are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. As a result of this action, "routine" earth stations will be able to communicate with Brasilsat A2. This should stimulate competition in the United States, provide consumers more alternatives in choosing communications providers and services, reduce prices, and facilitate technological innovation.

II. BACKGROUND

2. The Commission's *DISCO II Order* adopted a framework under which the Commission would consider requests for non-U.S. satellite systems to serve the United States. To implement this framework, the Commission, among other things, established a procedure by which a service provider in the United States could request immediate access to a foreign in-orbit satellite that would serve the U.S. market.¹ In the *DISCO II First Reconsideration Order*, the Commission streamlined this process by doing two things. First, it allowed the operators of in-orbit non-U.S. satellites offering fixed-satellite service to request authority to provide space segment capacity service to licensed earth stations in the United States. Under

¹ Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094, 24174 (para. 186) (1997) (*DISCO II*). For a more detailed summary of the *DISCO II* framework, see Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd 7207, 7209-10 (paras. 4-5) (1999) (*DISCO II First Reconsideration Order*).

DISCO II, this request could be made only by an earth station operator. Second, it created the Permitted Space Station List to facilitate access by the foreign satellite. Once a non-U.S. space station is permitted to access the U.S. market pursuant to a complete *DISCO II* analysis, it is placed on the Permitted Space Station List upon the applicant's request. This list includes all satellites with which U.S. earth stations with routinely-authorized technical parameters (known as "ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses.² The Permitted Space Station List is maintained on our website, and is also available via fax or e-mail.³ Brasilsat A2 operates in the conventional C-band.⁴ On January 11, 2000, Embratel filed a petition for declaratory ruling requesting us to add Brasilsat A2 to the Permitted List.⁵

III. DISCUSSION

A. General Framework

3. In *DISCO II*, the Commission set forth the public interest analysis applicable in evaluating applications to use non-U.S. licensed space stations to provide satellite service in the United States. This analysis considers the effect on competition in the United States,⁶ spectrum availability,⁷ eligibility and operating (*e.g.*, technical) requirements,⁸ and national security, law enforcement, foreign policy, and trade

² *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7214-16 (paras. 16-20). "ALSAT" means "all U.S.-licensed space stations." Originally, under an ALSAT earth station license, an earth station operator providing fixed-satellite service in the conventional C- and Ku-bands could access any U.S. satellite without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. See *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7210-11 (para. 6). The *DISCO II First Reconsideration Order* expanded ALSAT earth station licenses to permit access to any satellite on the Permitted List. *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215-16 (para. 19).

³ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215-16 (para. 19).

⁴ For purposes of this Order, the "conventional C-band" denotes the 3700-4200 MHz and 5925-6425 MHz frequency bands.

⁵ PanAmSat Corporation (PanAmSat) filed an opposition on March 8, 2000. PanAmSat later withdrew its opposition. See PanAmSat Withdrawal of Opposition, filed December 20, 2000. Prior to that withdrawal, on March 20, 2000, Embratel filed a motion to extend the due date for its reply from March 23 to March 31, 2000. Embratel explained that it needed additional time to address complex coordination issues raised in PanAmSat's opposition. It is the policy of the Commission that motions for extension of time shall not be routinely granted. See 47 C.F.R. § 1.46(a). Nevertheless, because considering Embratel's reply would not prejudice any other party in this proceeding, we verbally granted Embratel's motion on March 22, 2000. This Order confirms that grant.

⁶ *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

⁷ *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

⁸ *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

concerns.⁹ We evaluate Embratel's request under this framework.

B. Competition Considerations

4. In *DISCO II*, the Commission established a rebuttable presumption in favor of entry by non-U.S. satellites licensed by World Trade Organization (WTO) Members to provide services covered by the U.S. commitments under the WTO Agreement on Basic Telecommunications Services (Basic Telecom Agreement).¹⁰ These commitments included fixed-satellite service, except for direct-to-home (DTH) service. In this case, the presumption in favor of entry is applicable to Brasilsat A2, which is licensed by Brazil, a WTO Member,¹¹ and which will provide non-DTH fixed-satellite service to customers in the United States.

C. Spectrum Availability

5. In *DISCO II*, the Commission also determined that, given the scarcity of geostationary orbit locations and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States.¹² This is consistent with the Chairman's Note to the Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry. Brasilsat A2 will provide service to the United States from the 63° W.L. orbit location, and the closest satellite operating in the C-band not owned by Embratel is at least five degrees away from Brasilsat A2.¹³ Therefore, allowing Embratel to serve the United States from this orbit location will not affect operations of any U.S.-licensed satellites nor contravene the Commission's spectrum/frequency management policies.

D. Eligibility Requirements

6. In *DISCO II*, the Commission stated it would require non-U.S. space station operators to meet the same technical, legal, and financial qualifications that U.S.-licensed space station operators must meet to obtain a license.¹⁴ In this case, we need not, however, require Embratel to demonstrate that it is financially qualified to construct and launch a satellite, because Brasilsat A2 is already in orbit.¹⁵

⁹ *DISCO II*, 12 FCC Rcd at 24169-72 (paras. 175-82).

¹⁰ *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

¹¹ See <www.wto.org/wto/services/tel01.htm> at n.2 (a list of Basic Telecom Agreement signatories). See also <www.wto.org/wto/about/organsn6.htm> (a list of WTO Members).

¹² *DISCO II*, 12 FCC Rcd at 24159 (para. 150).

¹³ Brasilsat A2 is five degrees away from PAS-5 at 58° W.L., and six degrees away from SATCOM SN2 at 69° W.L. Embratel Petition at 4 and n.13; Embratel Reply at 2-3.

¹⁴ *DISCO II*, 12 FCC Rcd at 24161-63 (paras. 154-59).

¹⁵ *DISCO II*, 12 FCC Rcd at 24176 (para. 191) (financial qualification showing is not required for

7. We must determine whether Embratel has demonstrated its technical qualifications, however. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.¹⁶ This policy permits the maximum use of the geostationary satellite orbit.¹⁷ Applicants must demonstrate that they comply with the Commission's technical requirements, designed to permit two-degree orbital spacing, before being authorized to provide service in the United States. The Commission may license satellites that are not two-degree compliant (or earth stations seeking to access such), but only when the applicants can demonstrate that their operations will cause no harmful interference to existing compliant satellite operations. Further, non-conforming operations are authorized conditioned upon a licensee accommodating future satellite networks serving the United States that are two-degree compliant.¹⁸

8. Embratel provides a letter stating that it has completed the international coordination process for Brasilsat A2.¹⁹ It has also submitted the technical information specified in Sections 25.114(c)(5) through (11) and 25.114(c)(14) of the Commission's rules.²⁰ Based on our review of this information, we find that Brasilsat A2 complies with almost all the Commission's Part 25 requirements. The first exception is that Brasilsat A2 does not have the capability to switch polarity from the ground, as is required by Section 25.210(a)(3).²¹ In addition, Brasilsat A2 does not have the capability to change transponder saturation flux densities by ground command in 4 dB steps, as required by Section 25.210(c).²² Finally, Brasilsat A2 does not meet the station keeping requirements of Section 25.210(j).²³

in-orbit satellite). *See also* Embratel Petition at 4.

¹⁶ For more information regarding the Commission's two-degree spacing policy, see Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (Sept. 6, 1983).

¹⁷ Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 11 FCC Rcd 13788, 13790 (para. 6) (1996). Prior to the Commission's adoption of the two-degree spacing policy, satellites in the geostationary satellite orbit were usually spaced three or four degrees apart. By adopting rules that enabled satellite operators to place their space stations two degrees apart, the Commission was able to accommodate more geostationary satellites.

¹⁸ *See, e.g.,* Systematics General Corporation, Order and Authorization, 2 FCC Rcd 7550, 7550-51 (para. 9) (Com. Car. Bur. 1987); New Skies Satellites, N.V., Order and Authorization, 14 FCC Rcd 13003, 13038 (para. 78) (1999).

¹⁹ Embratel Petition, Exh. 1.

²⁰ Embratel Petition, Exh. 3. Because Embratel has completed the international coordination process for Brasilsat A2, it is not required to submit this technical information. *See* Section 25.137(b) of the Commission's rules, 47 C.F.R. § 25.137(b); *DISCO II Order*, 12 FCC Rcd at 24175-76 (para. 191). Embratel voluntarily submits this information in its Form 312, however.

²¹ 47 C.F.R. § 25.210(a)(3).

²² 47 C.F.R. § 25.210(c).

²³ Space stations should be designed with the capability of being maintained in orbit within 0.05° of

9. Embratel has not requested a waiver of any of the Commission's rules. On our own motion, we find good cause to grant Embratel a waiver of the three provisions in Section 25.210 cited above. Rules may be waived if there is "good cause" to do so.²⁴ Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.²⁵ For reasons explained below, we find that waivers of these three rules are warranted in Embratel's particular case.

10. First, we find that granting a waiver of Section 25.210(a)(3)²⁶ to Embratel will not undermine the policy objective of that rule. Section 25.210(a)(3) requires polarity-switching capability to permit U.S.-licensed satellites the flexibility to be assigned to different U.S. orbital positions, and to mitigate potential interference between adjacent fixed-satellite systems transmitting analog TV signals.²⁷ We recently found that waiving the polarity-switchability requirement does not undermine Section 25.210(a)(3) where the operator of a non-U.S. satellite had successfully coordinated its analog TV operations, provided that the non-conforming satellite remained at the coordinated orbit location.²⁸ For this reason, we also grant Embratel a waiver of Section 25.210(a)(3). This waiver is limited to Brasilsat A2 at 63° W.L. In addition, Embratel is prohibited from using Brasilsat A2 to transmit analog FM video signals to, from, or within the United States. This condition will remain in effect unless and until Embratel shows that it has coordinated specific analog FM video transmissions with adjacent satellite operators.

11. We also find that there is good cause to grant Embratel a waiver of the 4 dB step requirement in Section 25.210(c),²⁹ and the station keeping requirement in Section 25.210(j).³⁰ The International

their assigned orbital location. 47 C.F.R. § 25.210(j)(1). Brasilsat A2 can be maintained in orbit within 0.1° of its assigned orbital location. Embratel Petition, App. A at A-4.

²⁴ See Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁵ *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc., Order and Authorization*, 14 FCC Rcd 8182, 8185 (para. 5) (Int'l Bur., 1999) (*Dominion Video*).

²⁶ 47 C.F.R. § 25.210(a)(3).

²⁷ See *ANIK F1 Order* at para. 16.

²⁸ Telesat Canada Petition for Declaratory Ruling For Inclusion of ANIK F1 on the Permitted Space Station List, Order, DA 00-2835 (Sat. and Rad. Div., released Dec. 19, 2000) at paras. 16-17 (*ANIK F1 Order*). See also *Mabuhay Philippines Satellite Corp., Petition for Declaratory Ruling, Application of Loral CyberStar, Inc. for Authority to Operate Two Transmit/Receive Earth Stations at Kapolei, Hawaii, for Use in Conjunction with the Mabuhay Satellite Located at 146° E.L., Order and Authorization*, DA 00-2649 (Sat. and Rad. Div., released, Dec. 5, 2000) at para. 13 (*Mabuhay Order*) (waiving Section 25.210(a)(3) on the condition that the non-U.S. satellite operator not transmit analog FM video signals).

²⁹ 47 C.F.R. § 25.210(c).

³⁰ 47 C.F.R. § 25.210(j).

Bureau (Bureau) previously waived these rules where the satellite was already launched and could not be modified, the nearest satellite was three degrees away, and the satellite had a limited useful life.³¹ Similarly, the Commission recently waived the 4 dB step requirement because the specific satellites had already been launched, and the coordination of those satellites had been completed.³² Similarly, Brasilsat A2 has also already been launched. Embratel further states that it has coordinated Brasilsat A2 with other adjacent satellite systems, including PanAmSat's satellite at 58° W.L., the nearest U.S.-licensed satellite³³ In addition, because Brasilsat A2 was launched in 1986,³⁴ it is nearing the end of its useful life. Embratel has shown that it faces circumstances that have previously warranted waivers of Sections 25.210(c) and 25.210(j) for other satellites. Hence, a waiver of Sections 25.210(c) and 25.210(j) for Brasilsat A2 at 63° W.L. is also warranted. Further, we require Embratel to comply with its coordination agreement with PanAmSat and other adjacent satellite systems.

12. In the future, should the Commission authorize access to the U.S. market by a U.S.-licensed or non-U.S.-licensed satellite that is providing services that are two-degree-compliant, and is located two degrees or more from Brasilsat A2, Embratel would be expected to coordinate in good faith with the licensee of that satellite. If a coordination agreement is not reached, the operation of U.S. routine earth stations communicating with Brasilsat A2 must be on a non-harmful interference basis relative to routinely licensed U.S. services provided by the compliant satellite.³⁵

E. Other Issues

13. As described above, under *DISCO II*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis.³⁶ Nothing in the record before us raises any such concerns.

14. Finally, Embratel plans to dedicate two transponders on Brasilsat A2 to common carrier service.³⁷ Pursuant to the Bureau's Public Notice of December 17, 1999, placing a satellite on the

³¹ Columbia Communications Corp., Memorandum Opinion, Order, and Authorization, 13 FCC Rcd 17772, 17777-78 (para. 15) (Int'l Bur., 1998).

³² Applications of INTELSAT LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, Memorandum Opinion, Order, and Authorization, FCC 00-287 (released Aug. 8, 2000), at paras. 107-08.

³³ Embratel Reply at 2-4.

³⁴ Embratel Petition, App. A at A-6.

³⁵ We also imposed this condition on SatMex. *Satelites Mexicanos, S.A. de C.V.*, Petition for Declaratory Ruling, Order, DA 00-1793 (Sat. and Rad. Div., released Oct. 3, 2000), at para. 14.

³⁶ *DISCO II*, 12 FCC Rcd at 24170-72 (paras. 178-82).

³⁷ Embratel Petition, App. A at A-5.

Permitted List brings it within the scope of global international Section 214 authorizations.³⁸ We invited interested parties to comment on any issues that might be raised by including the Brasilsat A2 satellite in the scope of global international Section 214 authorizations. No one filed any comments. Accordingly, we find that it is in the public interest to allow common carriers with global international Section 214 authorizations to communicate with the Brasilsat A2 satellite at 63° W.L.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r), 308, 309, 310, and Sections 0.261 and 25.137(c) of the Commission's rules, 47 C.F.R. §§ 0.261, 25.137(c), each earth station with "ALSAT" designated as a point of communication, IS GRANTED authority to provide Fixed Satellite Services (FSS) in the 3700-4200/5925-6425 MHz frequency bands, to, from, or within the United States, by accessing the Brasilsat A2 satellite at the 63° W.L. orbit location, subject to the conditions set forth in its earth station license and in this Order below.

16. IT IS FURTHER ORDERED that the Brasilsat A2 satellite IS PLACED on the Permitted Space Station List, subject to the following conditions:

- (a) Brasilsat A2 is not authorized to provide any Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS) to, from, or within the United States.
- (b) Embratel's operation of Brasilsat A2 must comply with its applicable current and future operational requirements as a result of coordination agreements with other satellite systems.
- (c) ALSAT-designated routine earth stations are prohibited from sending or receiving any analog FM video television signal to or from Brasilsat A2.

17. IT IS FURTHER ORDERED that Embratel IS GRANTED a waiver of Sections 25.210(a)(3), 25.210(c), and 25.210(j) of the Commission's rules for the purpose of using Brasilsat A2 to communicate with ALSAT-designated routine earth stations in the United States. As a condition on the waiver of these three rule sections, Embratel must meet the requirements set forth in paragraphs 14 and 15 of this Order. The waiver of Section 25.210(a)(3) will remain in effect as long as Brasilsat A2 operates at 63° W.L.

18. IT IS FURTHER ORDERED that the motion for extension of time filed by Empresa Brasileira de Telecomunicações S.A. on March 20, 2000, IS GRANTED.

³⁸ See International Bureau Announced Process for Providing Service Under Global International Section 214 Authorizations Using Approved Non-U.S.-Licensed Satellite Systems Listed on the Permitted Space Station List, Public Notice, DA 99-2844 (released Dec. 17, 1999).

19. This Order is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (*See* 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

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